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EDMOND ROBLES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

I. INTRODUCTION

16 Following a jury trial, Edmond Robles was convicted of Counts 1 & 2, Title 18 USC 1343,
17 Wire Fraud, Count 5, a violation of Title 18 USC 241, Conspiracy Against Civil Rights, Count 6,
18 a violation of Title 18 USC 371, Conspiracy, and Count 7, a violation of Title 18 USC 666(a)(1)(A),
19 Theft Concerning Federally Funded Program. He was acquitted of two counts of Honest Services
20 Wire Fraud and one count of Conspiracy to Distribute Controlled Substances. The United States
21 Probation Office has prepared a Presentence Report (PSR) and concluded that the advisory United
22 States Sentencing Guideline (USSG) in this case is Total Offense Level 28, Criminal History
23 Category I. Mr. Robles objects to the Guideline calculation and requests that the Court find that the
24 accurate advisory Guideline is Total Offense Level 22, Criminal History Category I.¹

¹ This memorandum incorporates fully Defendant's Guideline Calculation, previously submitted to the Court.

Mr. Robles comes now before the Court requesting that the Court impose a sentence of 24 months imprisonment, to be followed by a term of Supervised Release. Such a sentence is sufficient, but not greater than necessary to fulfill the goals of sentencing as outlined in Title 18 USC 3553.

II. BACKGROUND

5 Ed Robles was born in San Francisco and is now 47 years old. He is the youngest of four
6 children born to his parents' marriage. Ed's father, 83 year old Ernest Robles, was born in San
7 Francisco, but raised for the most part in Michoacan, Mexico. He was the manager of the St. Francis
8 Hotel in San Francisco for over 30 years. Ed's mother, 82 year old Dolores, worked as a secretary
9 at Wells Fargo Bank's Market Street Headquarters. Mr. and Mrs. Robles are now retired and reside
10 in Las Vegas, Nevada. Ed's older brother Ernest is a graduate of the University of California
11 Berkeley and the University of Michigan Law School. After a career in private practice and U.S.
12 Bankruptcy Trustee, he was appointed in 1993 as U.S. Bankruptcy Judge in the Central District of
13 California, Los Angeles. Ed's older sister Patricia is a graduate of San Francisco State University,
14 is a manager for VISA Credit Company, and resides in San Mateo. His older sister Isabel is a
15 homemaker residing in Lake Oswego, Oregon.

16 Ed attended Catholic schools in San Francisco and graduated from Sacred Heart High School
17 in 1985. He was an all-league baseball player and ran track. Basically an average student, Ed then
18 attended City College of San Francisco for a year, after which he went to work full time. In 1986,
19 Ed joined the United States Marine Corps Reserve and was trained as a combat engineer. His unit
20 was deployed in Europe during the first Gulf War, but did not see combat. Ed completed his reserve
21 duty in 1992 and was Honorably Discharged at the rank of E-5, Sergeant.

In 1992, Ed joined the San Francisco Police Department. He completed the Peace Officer's Standards and Training (POST) approved academy and later earned an Advanced POST Certificate. He also completed specialized training in emergency vehicle operation and drug identification. He has been a guest instructor at the Police Academy. A review of Ed's police personnel file reveals consistent high ratings by his superiors. Over his 22 years on the street as a San Francisco Police

1 Officer, only one complaint against him was sustained by the Office of Citizen Complaints. He was
2 named in only one law suit, which was dropped by the complainant. He earned a number of
3 Captain's compliments for his excellent work as a police officer. A year before charges were filed
4 in the present case, Ed achieved his dream position in the Police Department, being assigned to the
5 motorcycle unit.

6 In 1998, Ed married Erin. They have three daughters, 15 year old Emily, and 8 year old twins
7 Estella and Eva. Ed's three daughters have been the focus of his life throughout their childhoods.
8 He has been the coach of their sports teams and has consistently been a major part of their lives. Ed
9 and Erin are separated, but share custody of the girls, whom Ed sees everyday.

10 The allegations of the present charges encompass the time period in Ed's career from early
11 to late 2009, when Ed was transferred to the motorcycle squad. It began with the arrival of Officer
12 Reynaldo Vargas in approximately February 2009 and ended with Ed's transfer in December 2009.
13 Throughout the balance of Ed's 22 plus year career with the Police Department there is no indication
14 of wrong doing, only effective police work appreciated by his colleagues. Officer Becki Newman
15 wrote:

16 "I have known Ed for 19 years. We met while working together at Mission Police
17 Station. I worked with Ed and saw him daily for years. I was new to the department
18 and once I met him and got to know him better I knew that he was someone I could
trust and depend on. Ed was a person I could go to with questions and he would
always steer me in the right direction."

19 Similarly, Sgt. Russell Gordon wrote:

20 "I have always found Ed's character to be of the highest caliber. My experience with
21 Ed has always left me with the impression that he is hardworking, trustworthy and
has a steadfast dedicated to the job at hand."

22 Ed's brother-in-law Robert Velarde, a 31 year veteran of the San Francisco Police
23 Department, offers a unique view of Ed:

24 "Not only were we 'brothers' by law, but we were also 'brothers' by profession. The
25 bond that develops in the law enforcement field is like no other as we go through the
26 trials and tribulations of everyday difficulties related to police life. Edmond and I
frequently talked at length regarding our experiences, and regaled in our stories and
'cop talk.' I know from personal observations and through discussions with many of
27 Edmond's co-workers, that he was highly regarded and an extremely hard working,

1 tenacious officer."

2 The present conviction does not fully define Ed Robles. Many people have stepped forward
 3 to express their love for him, confidence in him, and opinions of his character. Particularly moving
 4 is the account of Ed's reaction to his sisters severely disabled children. Ed's brother-in-law Lee
 5 Sturman wrote:

6 "My wife (Edmond's sister) and I are parents of two severely disabled children (ages
 7 17 and 12). Both were born with a rare genetic syndrome with characteristics that
 include;

8 Missing part of the brain called the corpus callosum
 9 Severe intellectual disabilities (mental retardation)
 No verbal speech capability
 Significant sensory issues
 10 Skeletal issues - Scoliosis (Daughter)
 Feeding issues requiring a liquid diet and feeding tube (Son)
 11 Inability to perform daily living activities (dressing, grooming, tidying, etc.)

12 As parents, we have come to realize that many people are uncomfortable around
 13 children with disabilities (and their parents). They will often stay silent or become
 14 distant and pull away from our lives. But not Uncle Edmond. Instead of pulling away,
 his caring and generous nature drove him to try to help our situation. Knowing that
 15 raising our kids places a huge financial burden on our family, Edmond took it upon
 himself to organize and promote a "walk-along-the-bay" in San Francisco with the
 sole purpose of raising funds for our children. The event was well-attended by family,
 friends, and strangers. We were very humbled and grateful for the turnout. Donations
 16 have been placed into trust for the benefit of our children.

17 But Edmond was not finished. Feeling he should be able to do even more, Edmond
 18 set up and promoted an online web site to help raise additional donations for our
 19 children. At this point, my wife and I felt truly overwhelmed with Edmond's
 generosity.

20 To me, Edmond is an inspiration. When others felt sorry, Edmond felt energized.
 21 When others felt helpless, Edmond felt a call to action. If my children could talk, they
 would surely call Uncle Ed their hero."

22 Ed and Christopher Millikin have been friends since they served together in the United States
 23 Marine Corps. Chris is now a Senior Engineering Manager for Google. He wrote:

24 "During our friendship, Ed has been there for me on countless occasions, but two
 25 immediately come to mind as highlighting his value to me as a friend. First, was a
 26 rough spot in my own marriage. Aileen and I separated for a time, and Ed was
 instrumental in helping us find our way. He never judged, he never chose sides. He
 simply loved us through the whole process, and reminded us of what we meant to one
 another. To that point, that was the toughest experience in my life. Little did I know
 at the time, that it was merely a dress rehearsal for true tribulation.

1 In 2004, my wife went in for out patient surgery for what we thought was a benign
 2 cyst. Instead, we were horrified to learn of a stage three tumor the size of a
 3 cantaloupe in her abdomen. Researching ovarian cancer does not fill one with hope
 4 and warmth, knowing that it afflicts the single most important person in your world
 fills you with a fear so vicious and suffocating that you find yourself in a dark and
 menacing place from which you think you will never emerge. It was at this time that
 my friend, no my brother, stood by me like no other.

5 Even my own family retreated to polite safety, the reality of the situation being too
 6 much for them to process. Over the course of the months of treatment, Ed was there
 7 to provide a meal, share a ball game or just offer a shoulder for me to weep on. I am
 happy to say that we found light at the other end of that tunnel, and my wife is well
 over ten years cancer free. For all the things I am thankful for, I am thankful for this
 kind of friendship that helped me stay the course through this most difficult time.”
 8

9 Ed’s wife Erin provides this important perspective of Ed:

10 “The most important role in Ed’s life is a loving and devoted father to our three
 11 beautiful daughters, Emily (15), Eva (8) and Estella (8). I knew when I first married
 12 Ed in 1998 that I had picked a husband who would always be there in every way for
 13 our children, if and when we were blessed enough to have a family, because of the
 14 amazing person he was, and his faith and commitment to his own family. Ed’s
 15 commitment to family was of utmost importance to me when making the decision to
 marry, because my own father died of cancer when I was just three years old, and I
 missed and longed for the role of a father in my life as I grew up. It has been so
 wonderful to see my children have the love of their father in their lives as they grow
 into amazing young girls. Through the years I have been so proud and happy to see
 the impact of Ed’s involvement with all three of them, whether it was with school,
 sports, music, family activities - Ed has enjoyed it all with them.

16 Although Ed and I separated last year I knew that even with the breakup of our
 17 marriage our girls would be ok because their father would still continue to be the
 incredible father he has always been to them, and he would continue to make raising
 our children his priority in life.

18 “ . . . I am frightful to see what the absence of Ed in my children’s lives for any
 19 amount of time will do to them. I am realistic, I know that Ed is facing very serious
 20 consequences, and I do not take that lightly. I ask, however, that you consider the
 impact of Ed’s sentence on so many of us, including Ed.”

21 Finally, Ed’s older brother, the Honorable Ernest Robles summed up Ed’s present
 22 circumstances and offers the Court a view of Ed no one else could have:

23 “Joining the SFPD was according to Ed, his greatest accomplishment. It gave him a
 24 chance to help others, it gave him discipline and it gave him the opportunity to find
 stability in his life. He got married, had three wonderful girls whom he coached in
 25 their many sport activities and was looking forward to seeing them grow into
 wonderful young ladies when he was charged.

26 Ed does not merit long incarceration. His life will never be the same. His relationship
 27 with his children will never be the same. He has always tried to help others and I

1 truly believe that putting him away would deprive others who would benefit from his
 2 life's experience.

3 Everyday that Ed put on his badge he was ready and willing to sacrifice his life for
 4 someone else. I heard him talk about his undercover work and on many occasions I
 asked him to transfer out. But, he said that it was work that needed to be done and he
 was proud of his part in it.

5 He performed society's dirty work. I cannot believe that after one transgression
 6 society's response to Ed is to toss him aside like garbage. . . . I have been a
 7 bankruptcy judge for 23 years. I spent 10 years in the Department of Justice. Both
 before and after this ordeal I am prouder of Ed than any person I have ever met."

III. APPLICABLE SENTENCING LAW

8 *United States v. Booker*, 160 L. Ed. 2d 621, 125 S.Ct. 738 (2005), renders the Guidelines
 9 as advisory only, and instructs the sentencing courts to consider the Guidelines in context of all of
 10 those factors enumerated in Title 18 USC 3553(a).

11 ". . . Section 3553(a) remains in effect, and sets forth numerous factors that guide
 12 sentencing. Those factors in turn will guide appellate courts, as they have in the past,
 13 in determining whether a sentence is unreasonable." *Booker*, at 660-661.

14 The Supreme Court addressed the issue of the "presumption of reasonableness" of a within
 15 Guidelines sentence in *Rita v. United States*, 551 S.Ct. 338, 127 U.S. 2456, 168 L.Ed. 2d 203 (2007)
 16 and instructed that a within Guideline sentence is presumed reasonable only upon **appellate review**.
 17 The Court stated:

18 "We repeat that the presumption before us is an *appellate* court presumption. Given
 19 our explanation in *Booker* that appellate "reasonableness" review merely asks
 20 whether the trial court abused its discretion, the presumption applies only on
 21 appellate review. The sentencing judge, as a matter of process, will normally begin
 22 by considering the presentence report and its interpretation of the Guidelines. 18
 23 U.S.C. § 3552(a); Fed. Rule Crim. Proc. 32. He may hear arguments by prosecution
 24 or defense that the Guidelines sentence should not apply, perhaps because (as the
 25 Guidelines themselves foresee) the case at hand falls outside the "heartland" to which
 26 the Commission intends individual Guidelines, to apply, USSG § 5K2.0, perhaps
 27 because the Guidelines sentence itself fails properly to reflect § 3553(a)
 considerations, or perhaps because the case warrants a different sentence regardless.
 See Rule 32(f). Thus, the sentencing court subjects the defendant's sentence to the
 thorough adversarial testing contemplated by federal sentencing procedure. See Rules
 32(f), (h), (i)(1)© and (i)(1)(D), see also *Burns v. United States*, 501 U.S. 129, 136,
 111 S. Ct. 2182, 115 L.Ed. 2d 123 (1991) (recognizing importance of notice and
 meaningful opportunity to be heard at sentencing). In determining the merits of these
 arguments, the sentencing court does not enjoy the benefit of a legal presumption that
 the Guidelines sentence should apply. *Booker*, 543 U.S. at 259-260, 125 S.Ct. 738,
 160 L. Ed. 2d 621." at 351.

1 Further, the Court instructed:

2 "The fact that we permit courts of appeals to adopt a presumption of reasonableness
 3 does not mean that courts may adopt a presumption of unreasonableness. Even the
 4 Government concedes that the appellate courts may not presume that every variance
 5 from the advisory Guidelines is unreasonable." at 354.

6 In *Nelson v. United States*, 129 S. Ct. 890, 892, 172 L.Ed. 2d 719 (2009), perhaps as a
 7 reminder and definitely for emphasis, the court stated:

8 "Our cases do not allow a sentencing court to presume that a sentence within the
 9 applicable Guidelines range is reasonable."

10 The Ninth Circuit reiterated this premise in *United States v. Edwards*, 595 F.3d 1004, 1015
 11 (9th Cir. 2010) ([Court] cannot presume a sentence is substantively unreasonable only because it falls
 12 outside the range recommended by the Sentencing Commission).

13 Indeed, in *Irizarry v. United States*, 128 S.Ct. 2198, 2202, 171 L.Ed. 2d 28 (2008), the Court
 14 ruled that a variance from the sentencing Guideline range did not even require notice to the parties.

15 The Ninth Circuit was heard on the presumption of reasonableness and directed that even on
 16 appeal the presumption of a Guideline sentence may not be reasonable. It stated:

17 ". . . A court of appeals may *not* presume that a non-Guidelines sentence is
 18 unreasonable. Although a court may presume on appeal that a sentence within the
 19 Guidelines range is reasonable, *id.*, we decline to adopt such a presumption in this
 20 circuit." *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

21 The Guideline range is simply the beginning of the analysis for sentencing, not the end. The
 22 Ninth Circuit stated:

23 "'The Guideline's factor may not be given more or less weight than any other.' So
 24 while the Guidelines are the 'starting point and initial benchmark' and must 'be kept
 25 in mind throughout the sentencing process,' the Guideline's range constitutes only
 26 a touch-stone in the district court's sentencing consideration." *United States v.*
27 Autery, 555 F.3d 864, 8172 (9th Cir. 2009)

28 *United States v. Ressam*, 629 F.3d 793, 828 (9th Cir. 2012) (en banc), defined "substantive
 29 reasonableness:"

30 "A substantively reasonable sentence is one that is sufficient, but not greater than
 31 necessary to accomplish §3553(a)(2)'s sentencing goals. The touchstones of
 32 'reasonableness' is whether the record as a whole reflects rational and meaningful
 33 consideration of the factors enumerated in 18 USC §3553(a). In determining
 34 substantive reasonableness, we are to consider the totality of the circumstances,

1 including the degree of variance for a sentence imposed outside the Guidelines
 2 range.”

3 The Court must now consider 18 USC 3553(a) in its entirety and impose a sentence
 4 “sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of
 5 this subsection.” The court, in determining the particular sentence to be imposed, shall consider –

- 6 (1) The nature and circumstances of the offense and the history and
 characteristics of the defendant;
- 7 (2) The need for the sentence imposed --
 - 8 (a) to reflect the seriousness of the offense, promote respect for the law and
 provide just punishment for the offense;
 - 9 (b) to afford adequate deterrence to criminal conduct;
 - 10 (c) to protect the public from further crimes of the defendant; and
 - 11 (d) to provide the defendant with needed education or vocational training,
 medical care or other correctional treatment in the most effective manner;

12 The sentencing court is now required to consider factors that the Guidelines effectively
 13 prohibited from consideration (ie: Age, USSG 5H1.1; Education and Vocational Skills, USSG
 14 5H1.2; Mental and Emotional Condition, USSG 5H1.3; Physical Condition Including Drug or
 15 Alcohol Dependence, USSG 5H1.4; Employment, USSG 5H1.5; Family Ties and Responsibilities,
 16 USSG 5H1.6; Socio-economic Status, USSG 5H1.10; Civic and Military Contributions, USSG
 17 5H1.11; and Lack of Youthful Guidance, USSG 5H1.12.). *United States v. Ameline*, 409 F.3d 1073,
 18 1093 (9th Cir. 2005) (*en banc*). To consider the “history and characteristics of the defendant,” the
 19 Court must now consider factors the Guidelines eschewed.

20 Finally, the Supreme Court has cautioned that respect for the law is promoted in many ways,
 21 not always measured by the strictness of sentences or the nature of harsh sanctions. The Court
 22 stated:

23 “... Moreover, the unique facts of Gall’s situation provide support for the District
 24 Judge’s conclusion that, in Gall’s case, “a sentence of imprisonment may work to
 25 promote not respect, but derision, of the law if the law is viewed as merely a means
 26 to dispense harsh punishment without taking into account the real conduct and
 27 circumstances involved in sentencing.” *Gall v. United States*, 128 S.Ct. 585, 599,
 169 L.Ed. 2d 445 (2007).

1 In order to meet the mandate of the *Booker* remedy, this court must calculate the appropriate
2 guidelines range and may consider appropriate departures. It must also apply the 3553(a) factors and
3 address any other specific characteristics of the defendant or his offense that might impact the
4 determination of a “reasonable” sentence under the particular circumstances of this case. The court
5 must then consider the statutory parsimony provision and impose a sentence “sufficient, but not
6 greater than necessary to comply with the purposes set forth in §3553(a)(2). The district court’s
7 sentencing decision will then be subject to an abuse-of-discretion review by the circuit. See *United*
8 *States v. Treadwell*, 593 F.3d 990, 999 (9th Cir. 2010) (reversal is appropriate only if district court’s
9 sentence is “illogical, implausible, or without support in inferences that may be drawn from facts in
10 the record”).

11 **IV. A SENTENCE SUFFICIENT BUT NOT GREATER THAN NECESSARY**

12 The jury’s verdict has resulted in Edmond Robles’ conviction for serious offenses that
13 represent a violation of his oath of office and a breech of the public’s faith. These offenses,
14 however, do not fully represent Edmond Robles’ character or his significant contributions to the City
15 of San Francisco, his community, and his family. Given the enormous collateral consequences as
16 a result of this conviction, including loss of his career, impoverishment, loss of his pension, loss of
17 future earning potential, and notoriety in the community, any period of imprisonment will satisfy the
18 sentencing statute’s requirement that the sentence reflect the seriousness of this conduct, sufficiently
19 punish Edmond Robles, promote respect for the law, provide adequate deterrence to Mr. Robles and
20 others, and protect the public.

21 At the outset, conditions of confinement for Ed Robles will be harsher than that of regular
22 inmates because of his status as a former police officer. The Ninth Circuit has recognized that
23 “conditions of confinement” can form the basis for a downward departure (or variance in the post
24 *Booker* era) from the established Guideline range. Mr. Robles will not necessarily be designated to

1 an institution close enough to his family to facilitate visits.² His day to day existence in prison will
 2 be characterized by threats or potential threats from other inmates. See *United States v. Davoudi*,
 3 172 F.3d 1130,1133 (9th Cir. 1999) (conditions of confinement are harsher for aliens), and *United*
 4 *States v. Charry Cubillos*, 91 F.3d 1342, 1344 (9th Cir. 1996) (conditions of confinement can form
 5 the basis for a downward departure).

6 Edmond Robles also has significant family responsibilities that impact on the sentencing
 7 decision. Letters submitted, including those quoted above, describe the vital role Mr. Robles plays
 8 in the lives of his three young daughters and the difficulty his wife will have supporting them without
 9 Mr. Robles' financial and personal contribution. The children will be devastated by his absence. Mrs.
 10 Robles will struggle mightily. Mr. Robles' current situation, fundamentally unable to work, has
 11 already created a huge financial burden on Mrs. Robles and Mr. Robles' family. Even during the
 12 era of mandatory Guidelines, family responsibilities were recognized as a potential basis for a below
 13 Guidelines sentence. See *United States v. Aguirre*, 214 F.3d 1122, 1127 (9th Cir. 2000). Mr. Robles
 14 does not suggest that this factor alone warrants a downward departure, but that it is a factor under
 15 3553(a) that warrants a variance.

16 Under "history and characteristics of the defendant," Mr. Robles asks that the Court consider
 17 the aberrant nature of this illegal conduct in the context of his entire life and his over 22 year career
 18 in the San Francisco Police Department. Ten times, beginning in May 1996 through February 2007,
 19 Mr. Robles was recognized by his superiors for outstanding police work (Captain's recognition in
 20 Mr. Robles' personnel binder), including jumping in San Francisco Bay to rescue a suspect who had
 21 fallen in. On two occasions he was hospitalized for injuries sustained in a motorcycle accident and
 22 during a violent arrest. In 1998, at McLaren Park, Mr. Robles was shot at by a suspect wielding an
 23 Uzi automatic rifle. Thankfully, he was not hit. After he left the plain clothes unit at Mission
 24 Station, he was complimented by a citizen in December 2012. The present illegal conduct took
 25

26 ² For example in a recent case in the Central District of California, a former correctional
 27 officer was designated to FCI Lexington Kentucky for his "safety."

1 place between February 2009 and ceased that December. It began when Reynaldo Vargas joined the
 2 unit and ended when Mr. Robles was transferred to the motorcycle unit, his career long ambition.
 3 It does not reflect over 21 years of fundamentally blemish free extremely dangerous work as a police
 4 officer.

5 Letters submitted on Mr. Robles' behalf describe an individual who cares about others and
 6 goes out of his way to make other's lives easier. Nothing is more compelling than the charity work
 7 he has done on behalf of his seriously disabled niece and nephew. The support and love he has given
 8 friends and family during difficult times, also exemplify characteristics of Mr. Robles not previously
 9 known to the Court. Mr. Robles has been a good man who has been a significant contributor to his
 10 family and community. Any analysis of his wrong doing should be considered in the context of all
 11 of the good he has done over the years.

12 Mr. Robles asks that the Court consider, not only the seriousness of his illegal conduct as
 13 found by the jury, but also 21 years of positive accomplishment in the dangerous work of a city
 14 police officer, his role in raising and supporting his three daughters to whom he is extraordinarily
 15 close, the contributions he has made to other family members, and the support and love he has given
 16 friends and colleagues over the years. In this context, a sentence of 24 months imprisonment will
 17 send the correct message to the community, particularly the community of police, will recognize the
 18 seriousness of Mr. Robles' illegal conduct, will promote respect for the law as it demonstrates that
 19 the Court has considered the entire context of Mr. Robles' conduct, and will be sufficient, but not
 20 greater than necessary.

21 DATED: February 12, 2015

Respectfully submitted,

22 /s/

23 _____
 24 Teresa Caffese
 Attorney for Defendant
 EDMOND ROBLES